

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#44

Applicant: Monty Krieger and Susan Acton

Serial No.: 08/765,108

Art Unit: 1646

Filed: March 27, 1997

Examiner: J. Ulm

For: CLASS BI AND CI SCAVENGER RECEPTORS

Assistant Commissioner for Patents
Washington, D.C. 20231**PETITION FOR SUPERVISORY REVIEW BY THE COMMISSIONER**

Sir:

Pursuant to 37 C.F.R. § 1.144, applicants petition the Commissioner to review the restriction requirement set forth in the Office Action mailed on March 5, 2002, and made final in the Office Action mailed on October 10, 2002. The Commissioner is hereby authorized to charge Deposit Account No. 50-1868 in the amount of \$130.00, the fee for filing this petition.

02/10/2003 11:11 AM Should an additional fee be required, the Commissioner is hereby authorized to charge any such fee to Deposit Account No. 50-1868.
08/20/06 10:00 AM

Remarks

This application was filed more than five years ago, with a claim to priority to U.S.S.N. 08/265,428, filed June 23, 1994. Both this application and the parent have been fully prosecuted through an Appeal to the Board of Patent Appeals and Interferences.

The claims in the parent application, U.S.S.N. 08/265,428, were restricted by this same examiner on August 28, 1995. The present application is a 35 U.S.C. § 371 application (March

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27, 1997) that was originally filed with a preliminary amendment (December 23, 1996; filed in the PCT) canceling the claims prosecuted in the parent application, and prosecuting the non-elected claims from the parent application. No change in scope or number of independent claims or amendments raising new issues have been made during this entire time period. No restriction requirement was ever made in the present application until March 5, 2002, after this application and its parent were remanded from the Board of Appeals. The examiner has examined all pending claims on the merits in the outstanding office action.

In the Office Action mailed on March 5, 2002, the Examiner divided the claims into five groups: Group I, claims 11-15 and 19-22 drawn to an isolated nucleic acid molecule encoding a scavenger receptor protein type BI and a host cell containing that molecule; Group II, claims 44-47, drawn to a binding assay using the scavenger receptor protein type BI encoded by the nucleic acid molecule of Group I; Group III, claim 48, drawn to a method of treatment by administering a scavenger receptor protein type BI as encoded by the nucleic acid molecule of group I; Group IV, claim 49, drawn to a method of treatment using the scavenger receptor protein of Group I; and Group V, claim 50, drawn to diagnostic assay, drawn to a method to detect the nucleic acid molecule of group I or the protein encoded thereby.

This application is not entitled to any of the transitional provisions providing for payment of a fee to prosecute claims which are newly restricted.

The claims are related as product and process of use. It is discretionary in such cases to keep the claims together, as this examiner recognized in the past.

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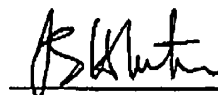
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Issuance of a restriction requirement at this time, after consideration on the merits of all pending claims and an appeal to the Board of Appeals and remand to the examiner, is blatantly unfair to the applicants, in view of the twenty year patent term from the date of first filing. It is totally inconsistent that, with no amendments having been made to the claims, consideration on the merits of all claims *to the point of sending this application to the Board of Appeals*, that the claims should now be divided into separate groups, requiring filing of multiple divisional applications. As the examiner is aware, all claims in issue are drawn to a single invention: the scavenger receptor protein and nucleic acid molecule encoding the scavenger receptor protein, and methods of use thereof.

Accordingly, rejoinder and continued consideration of all claims in this case is earnestly solicited. Should this petition be denied, then applicant elect the claims of group I.

Allowance of all claims 11-15, 19-22, and 44-50 is respectfully solicited.

Respectfully submitted,



Todd S. Hofmeister
Reg. No. P-53,029

Date: December 10, 2002

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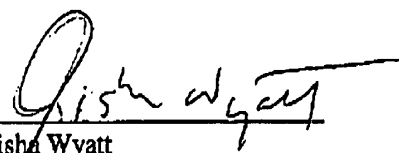
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Certificate of Transmission Under 37 C.F.R. § 1.8

I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being transmitted via facsimile on the date shown below to the Assistant Commissioner for Patents, Washington, D.C. 20231.


Aisha Wyatt

Date: December 10, 2002